

BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C.

RANDALL EHRLICH,

Complainant,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Docket No.: C2020-1

**RESPONSE TO MOTION TO DISMISS**

Complainant **RANDALL EHRLICH**, through attorney of record **ADAM P. KARP** of **ANIMAL LAW OFFICES**, opposes USPS's motion to dismiss as follows. He bases the opposition on the *Complaint*, the *Second Ehrlich Declaration*, which incorporates by reference the *Ehrlich Declaration* filed in C2019-1, and the *Karp* and *Lucas Declarations* that were filed in C2019-1, all of which are referenced here.

Undue and unreasonable discrimination has plagued Mr. Ehrlich for now five years, suffering a service blackout irrationally imposed by assertions falsely charging Mr. Ehrlich with alleged behaviors of a dog he has not possessed since late 2015. In so doing, USPS attempts to place him in the same category as customers with aggressive dogs when, in truth, that accused dog never broke the threshold of his front door to attack, chase, menace, or touch letter carrier Sonya

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ANIMAL LAW OFFICES OF  
**ADAM P. KARP, ESQ.**  
114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225  
(888) 430-0001 • Facsimile: (833) 878-6835  
adam@animal-lawyer.com

1 Voisine, and any dogs he has possessed since have not been accused of mischievous or violent  
2 behavior, placing Mr. Ehrlich in the same class as customers with well-behaved dogs (or those  
3 without dogs at all). Yet, unlike his fellow customers, the mail receptacle he has used to send and  
4 receive mail at his home since 2003 has been disqualified from further use solely due to an alleged  
5 incident from 2015. Despite his legitimate concerns of mail theft (reignited by a September 2019  
6 theft, which he described in his *Second Ehrlich Declaration*), he acquiesced to BPA's demand and  
7 moved his box about 10' from the sidewalk on a boundary fence, yet this did not satisfy USPS.

8 Voisine and BPA are the common discriminatory denominator affecting Mr. Ehrlich and a  
9 large number of individuals in a significant geographic region. As explained below, this renegade  
10 letter carrier has seen fit to wield her erratic and cruel power, instilling fear and having an intended  
11 chilling effect that, when nonetheless overcome by a few brave individuals, receives a fresh gust  
12 of indifference and condonation by her supervisors, creating a conspiracy that has perverted  
13 USPS's mission and thwarted postal accountability at several levels.

14  
15 The *Complaint* chronicles the series of unreasonable, retaliatory, and discriminatory actions  
16 of letter carrier Sonja Voisine, beginning fourteen years ago with Peggy Hougardy, a Ballard  
17 resident. Claiming an aggressive dog impeded access to Hougardy's premises, Voisine refused to  
18 deliver mail unless she moved her mailbox to the sidewalk. Hougardy disputed these meritless  
19 claims and refused the ultimatum, citing knee problems and theft concerns. Ultimately, USPS  
20 Safety Advocate Michael Offield investigated, found Voisine's contentions unfounded, and caused  
21 her to be disciplined. Mail delivery thereafter resumed to Hougardy's home. By 2012, Voisine  
22 was removed from Hougardy's route. *Complaint*, ¶¶ 10-23. Complainant Randall Ehrlich, also a  
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**ADAM P. KARP, ESQ.**  
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adam@animal-lawyer.com

1 Ballard resident, has owned and resided at 5833 7<sup>th</sup> Ave. NW, Seattle, Wash. since 2003. On or  
2 about August 11, 2012, Ehrlich suffered a break-in at his residence, which he reported to police.  
3 This prompted concerns of mail theft should he position his mailbox to the sidewalk. *Id.*, ¶¶ 24-  
4 25. The first adverse interaction with Voisine was years before 2015 when Ehrlich complained to  
5 USPS about Voisine's extreme rudeness. The next day he found a Netflix DVD delivered to his  
6 mailbox snapped in half. *Id.*, ¶¶ 29-30.

7         On July 20, 2015, Ehrlich's dog Cookie was under his supervision behind a metal gate and  
8 firmly secured screen door within his residence. Cookie barked at Voisine, but presented no threat.  
9 This is expressly contrary to allegations that she burst through the screen door (something that was  
10 only first been alleged in November 2018 as part of USPS's motion to dismiss) or the insinuation  
11 of Mr. Bell, who was not even working at BPA in 2015, that Cookie viciously attacked Voisine.  
12 *Ehrlich Decl.* As a result of this nonincident, Voisine unilaterally stopped Ehrlich's mail delivery.  
13 Within days, Voisine delivered a *Memorandum of Understanding* to Ehrlich conditioning future  
14 mail delivery on his signing the document. Ehrlich was not informed of whether or how he might  
15 exercise any right to appeal or otherwise challenge Voisine's unilateral determination. Ehrlich  
16 executed it, but within days his mail was shut off again and began to be returned to sender. No  
17 notice of this second cessation of mail delivery was ever given. *Id.*, ¶¶ 31-33. Nor was Ehrlich  
18 informed of whether or how he might exercise any right to appeal or otherwise challenge this mail  
19 cessation.  
20

21         On July 30, 2015, Ehrlich adopted Cookie to Tanya Johnson of Puyallup, Wash. Though  
22 he obtained another dog, that canine had a positive interaction with a USPS safety inspector who  
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1 came to Ehrlich's residence. Notwithstanding this favorable inspection, mail service did not  
2 resume. Ehrlich contacted BPA management on or about August 12, 2015 to prevent mail from  
3 continuing to be returned to sender. Instead of informing Ehrlich of whether or how he might  
4 exercise any right to appeal or otherwise challenge the continued nondelivery of mail, the  
5 manager(s) with whom he spoke offered to hold his mail at the BPA instead of returning to sender.  
6 Despite this promise, over the next two years, his mail was returned to sender on at least five  
7 different occasions without notice to Ehrlich. *Id.*, ¶¶ 34-36. As a result of mail being returned to  
8 sender, instead of being delivered to his home or held at the BPA, Ehrlich did not receive a book  
9 he ordered through Amazon and was forced to pay double shipping.

10 Desperate to receive and send mail from his residence, Ehrlich made numerous in-person  
11 and telephonic contacts at BPA yet obtained no further information as to why he could not get mail  
12 at his dwelling until, on August 15, 2015, Mike Fletcher explained that Ehrlich was subject to a  
13 "dog hold" and would never receive mail at his porch, even though Cookie was long gone, until  
14 he paid to move his mailbox to the sidewalk. Expressing concern about mail theft, Ehrlich offered  
15 to mount the box away from the door and around the corner of the house, and did so on or about  
16 March 29, 2017. *Id.*, ¶¶ 37-38, 62.<sup>1</sup>

17 Three months of nondelivery later, in October 2015, Ehrlich paid for a post office box.  
18 Even then, he missed important bills and letters, including his ballot to vote in the April and August  
19 2017 special elections. *Id.*, ¶ 56. Meanwhile, Voisine continued her disturbing behavior. For  
20  
21

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22 <sup>1</sup> Ehrlich also complained to the USPS Consumer Affairs division, the Postal Regulatory Commission ("PRC"), the  
23 USPS Seattle District Manager of Consumer & Industry Contact, the Seattle Postmaster, and repeatedly contacted the  
24 Postmaster General in Washington, D.C., all without success. *Id.*, ¶¶ 39-55, 58, 60-62, 66, 68.

1 instance, in September 2016, Voisine pointed one of her hands at Ehrlich as if it were a gun. *Id.*, ¶  
2 59. Following an April 3, 2017 meeting between Ehrlich, a neighbor whose mail was also not  
3 delivered, and Bell (who refused to address Voisine’s behavior or ensure she would not be a threat  
4 to Mr. Ehrlich or his animals), Ehrlich returned home to find a bagel in his backyard, which he  
5 suspected was thrown there by Voisine. His dogs had partially eaten the bagel. *Id.*, ¶ 63. Ehrlich  
6 reported the “finger gun” and bagel incidents to Seattle Police. *Id.*, ¶ 64. On May 18, 2017, Bell  
7 wrote Ehrlich that if he refused to move his mailbox to the sidewalk or establish another delivery  
8 address, his mail would no longer be held but everything would be returned to sender. *Id.*, ¶ 69.

9 While Ehrlich’s original mailbox is positioned by his front door about twenty feet from the  
10 sidewalk (*Id.*, ¶¶ 26-27), in an effort to compromise, he did position a second mailbox along the  
11 side fence. However, USPS and Voisine refused to deliver to it for no legitimate reason. Below is  
12 a photograph fairly and accurately depicting the alternative location. In the news, Mr. Ehrlich’s  
13 neighbor Lisa Sorensen was interviewed. She received mail at her door and had a dog. She was  
14 quoted as saying due to drama she hesitated to even talk to the reporter, adding “And we’ve tried  
15 to stay on the good side, to be honest, to keep getting mail.”  
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adam@animal-lawyer.com

1 Numerous other individuals on Voisine's route faced similar denials of service and  
2 returned mail. See *Karp, Lucas, and Ehrlich Declarations*, providing evidence of several other  
3 residents on Voisine's route who have suffered nondelivery for capricious and retaliatory reasons.  
4 *Id.*, ¶ 73; see *Karp Decl.*, and subjoined statements of Peggy Hougardy, Erika and Mark  
5 Middlebrooks, Wendy Hamal Redding and Tracy N. Redding, India Ornelas, Jeremiah  
6 Winghart, Valerie Capon and Ryota Akamine, Kimberly Arrow, Matthew Leonard, Melissa  
7 Flynn, and David and Jacqui Barnes, as well as a person who requested anonymity for fear of  
8 retaliation by Voisine. **KARP 1-34.**<sup>2</sup>

9 On explicit condition of anonymity, a peer of Voisine spoke to Mr. Karp and stated that  
10 her intimidation tactics extend beyond those on her route but also her co-workers. Indeed, on  
11 information and belief, Voisine and her partner, co-worker Wylice Temple, filed an EEOC  
12 complaint against Bell, who was told he could not even speak to them. Regardless of the merit of  
13 same, this detail certainly casts an appearance of doubt and establishes a conflict with respect to  
14 his testimony. Her actions within the BPA and without establish a habit of bullying and  
15 dissembling in a systemically discriminatory pattern that is wholly undue and unreasonable. *Karp*  
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18 <sup>2</sup> News coverage of this problem has been found in television and print. See Heather Graf, *No mail delivery in Seattle*  
19 *neighborhood for 3 years*, KING 5 (May 11, 2016) ([www.king5.com/article/news/local/no-mail-](http://www.king5.com/article/news/local/no-mail-delivery-in-seattle-neighborhood-for-3-years/281-185128503)  
20 [delivery-in-seattle-neighborhood-for-3-years/281-185128503](http://www.king5.com/article/news/local/no-mail-delivery-in-seattle-neighborhood-for-3-years/281-185128503))(accessed Jan. 8, 2018); Heather Graf, *More complaints*  
21 *about no mail delivery in Ballard*, KING 5 (Jun. 3, 2016) ([www.king5.com/article/news/local/more-complaints-about-](http://www.king5.com/article/news/local/more-complaints-about-no-mail-delivery-in-ballard/229523633)  
22 [no-mail-delivery-in-ballard/229523633](http://www.king5.com/article/news/local/more-complaints-about-no-mail-delivery-in-ballard/229523633))(visited Jan. 8, 2018); Ana Sofia Knauf, *Some Ballard Residents Are Receiving*  
23 *Mail for the First Time in Three Years*, ([https://www.thestranger.com/slog/2016/05/11/24073042/some-ballard-residents-are-receiving-](https://www.thestranger.com/slog/2016/05/11/24073042/some-ballard-residents-are-receiving-mail-for-the-first-time-in-three-years)  
24 [mail-for-the-first-](https://www.thestranger.com/slog/2016/05/11/24073042/some-ballard-residents-are-receiving-mail-for-the-first-time-in-three-years)  
25 [time-in-three-years](https://www.thestranger.com/slog/2016/05/11/24073042/some-ballard-residents-are-receiving-mail-for-the-first-time-in-three-years)) (visited Jan. 8, 2018); Carolyn Ossorio, *Seattle neighbors file lawsuit against mail*  
26 *carrier*, KIRO 7 (Aug. 25, 2017) ([http://www.kiro7.com/news/local/seattle-neighbors-file-lawsuit-against-mail-](http://www.kiro7.com/news/local/seattle-neighbors-file-lawsuit-against-mail-carrier/598045080)  
27 [carrier/598045080](http://www.kiro7.com/news/local/seattle-neighbors-file-lawsuit-against-mail-carrier/598045080))(visited Jan. 8, 2018).

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adam@animal-lawyer.com

Decl., ¶ 10.

Mr. Ehrlich believes that Voisine has been taunting him by dropping cans of opened cat food on his property, near the sidewalk, which he believed were poisoned. Such tins were deposited at his property shortly after Voisine was served with the federal lawsuit, in February 2018, March 2018, October 2018, and December 2019. *Complaint*, ¶¶ 71.

## LAW

### **Standard of Review**

On a motion to dismiss under FRCP 12(b)(6), all facts must be assumed as true. Hearsay disputing same (e.g., statements ostensibly made by Voisine to Bell) receives no deference. *Iqbal* held that the complaint may survive a motion to dismiss only if, taking all well-pleaded factual allegations as true, it contains enough facts to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 US 662 (2009). Mr. Ehrlich has furnished the Commission with dozens of pages of allegations and exhibits as part of his opening pleading. He has devoted a large portion of his complaint describing the broad impact the discriminatory actions of Voisine and BPA have had.

The 39 USC § 403(c) standard asks Mr. Ehrlich to state facts that demonstrate he was (1) offered less favorable terms and conditions than one or more other mailers; (2) that he is similarly situated to the other mailer or mailers who have been offered more favorable terms and conditions of service; and (3) that there is no rational or legitimate basis for the USPS to deny him the more favorable terms and conditions. Under any standard of review for a violation of 403(c), Mr. Ehrlich's *Complaint* establishes a colorable claim. The D.C. Circuit Court of Appeals found

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1 similarly with respect to the amended allegations made by Mr. Ehrlich. *See Ehrlich v. PRC*, 19-  
2 1004, at fn.1; *Complaint*, ¶¶ 73, 83.

3 The terms and conditions at issue are residential delivery to the receptacle mounted near  
4 his door as it had been for several years, as other neighbors enjoy, including those with a  
5 dog, such as Lisa Sorensen who was interviewed as part of the Q13 investigation.<sup>3</sup> Mr. Ehrlich  
6 is similarly situated to Ms. Sorenson and other customers on Voisine's route (i.e., all others who  
7 receive mail at their front porch) given that for the last four years he has not had a dog accused of  
8 any vicious or otherwise interfering behavior. For all intents and purposes, he is like any other  
9 resident whose premises present no danger to the letter carrier yet he has been ordered to  
10 relocate his mailbox to the street, risking mail theft, or never get mail again. Discrimination also  
11 applies along Voisine's entire route, for she has harmed numerous customers, with and without  
12 dogs, including a threat to cut off service to an entire block. Yet, on information and belief,  
13 customers on other routes within BPA's coverage area do not suffer her wrath or BPA's  
14 acquiescence to disregarding Voisine's long history of unstable and threatening behavior, which  
15 is another reason why Mr. Ehrlich has quite reasonably asked that another carrier deliver his mail.

17 Mr. Ehrlich's case differs substantially from the facts in *Goodman*, which, incidentally,  
18 was never opposed by Mr. Goodman as he did not receive notice of USPS's motion to dismiss.  
19 Here, alleged facts, if proven true, demonstrate no dog is interfering with or harassing Voisine yet  
20 despite having no aggressive dog, other postal customers with and without dogs are receiving mail  
21

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23 <sup>3</sup> <https://q13fox.com/2017/10/30/decade-long-post-office-dog-hold-leads-to-federal-lawsuit/>



1 delivery to their homes, and by their front doors. Mr. Ehrlich has provided a suitable mail  
2 receptacle at a postal-approved location for the delivery of mail since 2003. He furnished yet  
3 another suitable receptacle on his fence line in 2017. POM 623.1 has been unduly and  
4 unreasonably invoked against Mr. Ehrlich in a discriminatory fashion that the PRC should not  
5 countenance further.

### 6 **Individualized Assessment of Allegedly Offending Dog Required**

7  
8 Before municipalities may impose restrictions on dogs incidental to a designation of same  
9 as vicious, dangerous, or potentially dangerous, the dog must actually cause injury, bite, chase, or  
10 approach in a menacing fashion or apparent attitude of imminent attack. Yet, as made apparent  
11 from USPS's motion to dismiss, it believes it can terminate mail service forever if a dog, who has  
12 never been cited by (much less reported to) animal control or law enforcement for any untoward  
13 behavior, merely barks at a letter carrier from behind a closed door with screen and gate barrier.  
14 Moreover, it takes the untenable view that even after the incident canine has vacated the premises,  
15 the customer's dwelling remains forever contaminated with the memory of an nonextant cur and,  
16 whether or not the customer thereafter has a dog of most genteel nature, he may no longer enjoy  
17 mail delivery for the rest of his inhabitation at that address. It should strike the PRC as excessive,  
18 unreasonable, and highly discriminatory to hold this draconian perspective. Yet it also thwarts the  
19 purpose of the putative Animal/Insect Policy, which is focused on an imminent problem. Once  
20 abated (by removal of the alleged threatening animal or insect), the impetus and necessity for a  
21 continued "dog hold" no longer can be justified. As with human beings, dogs should be judged  
22 individually and not based on presumption or prejudice. Indeed, in the context of housing  
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**ADAM P. KARP, ESQ.**

114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225  
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adam@animal-lawyer.com

discrimination, the Department of Housing and Urban Development made this individualized inquiry clear:

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.<sup>6</sup>

*Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, FHEO-2013-01, at 3 (Apr. 25, 2013). To the extent such lifelong (meaning, of the postal customer, not the dog) “dog holds” are employed throughout the country, a measured response from the PRC is most desperately needed, one that will rein in expectations and curb overreaches so that letter carriers may not use mooted phenomena or historical speciesism as a pretext to fail to perform their occupational duties into the future.

### **Allegations Supporting 403(c) Discrimination**

USPS cites to Sorenson as an illustration of why USPS does not discriminate against dog owners. *MTD*, 14. Yet, it misapprehends the point. Sorenson has a dog and enjoys mail delivery at her porch, while Ehrlich (with or without a dog) will have no mail delivery altogether unless he

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adam@animal-lawyer.com

1 moves his mailbox to the sidewalk. The discrimination is as undeniable as the distance between  
2 the front door to the dwelling on private property (where both Sorenson and Ehrlich have a porch-  
3 mounted mailbox) and the 20-30' to the sidewalk where thieves may access the box without  
4 trespassing. USPS also tries to draw a distinction between good dog owners enjoying mail delivery  
5 and bad dog owners who do not, citing to the thirteen customers discussed in Mr. Karp's  
6 declaration. Yet, USPS assumes facts and does so in the light least favorable to Mr. Ehrlich, which  
7 is hardly the operative standard. The customers who submitted statements and declarations as part  
8 of Mr. Ehrlich's 2019 filing with the PRC were *disputing* the false allegations made concerning  
9 their dogs.

10  
11 For purposes of a dispositive motion to dismiss, all well-pleaded facts *must be assumed as*  
12 *true*. Mr. Ehrlich's *Complaint* alleges that Voisine's claims of aggressive dogs were "meritless" in  
13 the case of Peggy Hougardy (§ 19 (Offield found Voisine's allegations meritless)), that there was  
14 "no threat" from Mr. Ehrlich's dog Cookie (§ 31), nor from Mr. Ehrlich's subsequent dog (§ 35  
15 (USPS safety inspector had positive interaction)), that Voisine had made numerous false  
16 contentions coupled with assault, harassment, unreasoning ultimatums, damage to personalty, and  
17 other wrongful acts (§ 73, incorporating by reference all declarations and statements subjoined to  
18 the *Karp Decl.*)), and that, in addition to Sorenson, "Other individuals [who are similarly-situated  
19 to Ehrlich (i.e., those with well-behaved dogs or those without dogs but whose premises present  
20 no dangers to the letter carrier) but who enjoy residential mail delivery to their front doors] are  
21 ascertainable" (§ 83). Indeed, the PRC may rightly assume that the hundreds of other customers  
22 on Voisine's route are getting mail at their porches, unlike Mr. Ehrlich, who is similarly situated  
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1 in that he has no animal presenting a problem for a carrier. It must also be remembered that on a  
2 motion to dismiss, Mr. Ehrlich need not actually furnish such evidence. *See, supra*, discussion of  
3 standard and USPS's citation to federal caselaw.

4 USPS notes that Mr. Ehrlich "offer[s] no response or explanation about [his] dog's  
5 behavior when the carrier approaches the door," but he did, in the *Complaint*, and both his  
6 declarations, disputing that his dog ever engaged in inappropriate behavior, were not under control,  
7 running at-large, or threatening in any way. What USPS does not speak to is why Mr. Ehrlich must  
8 move his mailbox from the porch at which he received mail for 12 years, to the sidewalk where  
9 mail theft is highly likely when the alleged threat no longer exists and has not for nearly five years.  
10 Mr. Ehrlich need not have made any compromise by erecting a box on the fenceline, but he did so  
11 without acquiescence from USPS, which insists that he receive no mail unless he moves his box  
12 ten feet closer to the sidewalk.  
13

14 Against the backdrop of facts stated herein, Mr. Ehrlich's legitimate concerns of  
15 harassment and malicious mischief from Voisine, the recent evidence of theft, and no dog-related  
16 complaint since 2015, it is wholly reasonable for him to insist on delivery at his porch and  
17 illegitimate and discriminatory for USPS to demand otherwise. USPS furthers a claim that a fence  
18 box lacks a "line of sight" and contravenes POM 631, yet no subsection with this "line of sight"  
19 requirement is cited by Bell or counsel. Nor does [www.usps.com/manage/mailboxes.htm](http://www.usps.com/manage/mailboxes.htm) impose  
20 such condition. A close reading of the latest available version of the POM (July 2016) does not  
21 use the phrase "line of sight" in the entire 570-page manual. Nor was the phrase found in the 2018  
22 revisions ([https://about.usps.com/postal-bulletin/2018/pb22492/html/updt\\_002.htm](https://about.usps.com/postal-bulletin/2018/pb22492/html/updt_002.htm)). Regardless,  
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1 porch delivery provides this arbitrary “line of sight” preference and the fence-mounted box can be  
2 viewed with ease by a letter carrier walking the sidewalk. See ChIR No. 1, Exh. 6.

3 It should also be noted that the District policy does not require that the box be moved for  
4 termination of a dog hold. Rather, it states that if the situation is “corrected to the point where the  
5 carrier no longer feels an immediate threat, delivery may be resumed.” See ChIR No.1, Exh. 1 - 1.  
6 Correction undoubtedly includes removal of the allegedly offending threat, which occurred in  
7 2015. Of note is that animal control was never once notified and no adverse action or even warning  
8 given by same, and there is no evidence that the carrier required assistance in delivering any dog  
9 interference letters described therein. See ChIR No. 1, Exh. 1 – 3. POM 631.23 cannot possibly be  
10 read to deny delivery to a box at or near the door of a residential delivery point without just cause.  
11 The singular “incident,” which was rectified in July 2015 when Cookie left and no further  
12 complaints were made, was nonetheless compromised by Mr. Ehrlich moving his box, though there  
13 was no longer cause for same. It is an abuse of discretion for the District Manager to find that the  
14 mail could not be efficiently, safely, and conveniently served by the carrier. There has been no  
15 alleged complaint against Mr. Ehrlich or his dogs by Voisine or any other postal worker for over  
16 three years, yet he receives no mail.

### 18 **Relief to be Granted**

19 39 USC 3662(c) provides the PRC with plenary authority to order USPS to “take such  
20 action as the Commission considers appropriate in order to achieve compliance with the applicable  
21 requirements and to remedy the effects of any noncompliance.” 39 CFR § 3030.50 echoes this  
22 authority explicitly. Certainly, if a 403(c) violation is found, the PRC may take steps to ensure  
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1 compliance therewith, meaning ceasing discrimination and restoring mail delivery to Mr. Ehrlich's  
2 porch.

### 3 **Mootness**

4 The language in the POM concerning that mail can be delivered efficiently, safely, and  
5 conveniently presupposes a reasonable, honest, nonvindictive letter carrier, not one who was  
6 previously disciplined for similar misbehavior (see Hougardy/Offield) and has run amok harassing  
7 and wielding her power against customers and co-workers. The *status quo ante* was mail to Mr.  
8 Ehrlich's door. USPS's unreasonable proposal sought to end the status quo by presupposing that  
9 his box by the door was not efficient, safe, or convenient. Or even that the one 10' from the  
10 sidewalk was not, regardless of theft concerns or the veracity of Voisine. The only way to moot  
11 this matter is to restore service to Mr. Ehrlich's front door without discriminatory acts as asserted.  
12

### 13 **Res Judicata**

14 This argument should be rejected for obvious reasons. This Complaint incorporates by  
15 reference numerous allegations that were substantiated by several declarations filed in response to  
16 USPS's 2018 motion to dismiss in C2019-1, which the D.C. Circuit Court of Appeals believed the  
17 PRC *did not consider* in dismissing the case the first time. Having now been explicitly referenced  
18 for consideration in C2020-1, no estoppel can possibly apply for the four corners of the instant  
19 complaint has changed. The PRC should not ignore the strongly worded footnote of the D.C Circuit  
20 Court of Appeals that, "If Ehrlich were to re-plead with the allegations of similarly situated  
21 individuals that appear in his response, he may well have a plausible ¶ 403(c) discrimination  
22 claim." This he has done.  
23

24 **RESPONSE TO MOTION TO DISMISS**

25 - 14

ANIMAL LAW OFFICES OF  
**ADAM P. KARP, ESQ.**  
114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225  
(888) 430-0001 • Facsimile: (833) 878-6835  
adam@animal-lawyer.com

**Leave to Amend**

If the PRC finds that the plain language of the *Complaint* does not adequately reflect the additional information contained in this opposition and that, with such oppositional material, it would not dismiss, then Mr. Ehrlich hereby seeks leave to so amend and have this matter heard on the merits.

Dated this January 30, 2020.

ANIMAL LAW OFFICES

*/s/ Adam P. Karp*

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Adam P. Karp, WSB No. 28622  
Attorney for Complainant Ehrlich